A

LOO CHOOI TING v. UNITED OVERSEAS BANK LTD

COURT OF APPEAL, PUTRA JAYA
ABDUL WAHAB PATAIL JCA
MOHD ZAWAWI SALLEH JCA
UMI KALTHUM ABDUL MAJID JCA
B [CIVIL APPEAL NO: W-02-459-02-2012]
22 JUNE 2015

CIVIL PROCEDURE: *Cause of action – Loan facilities – Claim for payment – Judgment in default obtained against defendant for outstanding sum – Whether*
C *cause of action against defendant merged in judgment of High Court in Singapore – Doctrine of merger – Whether applicable to foreign judgments – Whether default judgment binding as judgment given after trial on merits – Doctrine of res judicata – Applicability – Whether plaintiff barred from relitigating action – Whether High Court of Singapore's judgment acted as final prohibition to any other proceedings*
D *– Whether proceedings for recovery sum payable under judgment must be by way of registration – Reciprocal Enforcement Of Judgments Act 1958, s. 7*

CIVIL PROCEDURE: *Judgments and orders – Judgment in default – Judgment in default obtained against defendant for outstanding sum – Whether cause of action against defendant merged in judgment of High Court in Singapore –*
E *Doctrine of merger – Whether applicable to foreign judgments – Whether default judgment binding as judgment given after trial on merits – Doctrine of res judicata – Applicability – Whether plaintiff barred from relitigating action – Whether High Court of Singapore's judgment acted as final prohibition to any other proceedings – Whether proceedings for recovery sum payable under judgment must be by way*
F *of registration – Reciprocal Enforcement Of Judgments Act 1958, s. 7*

CIVIL PROCEDURE: *Preliminary objection – Issues raised – Whether there were live issues between parties – Whether issues had become academic – Whether appeal would be a mere exercise in futility – Whether preliminary objection overruled*

G The plaintiff, a licensed bank carrying its business in Singapore, made available to the defendant a share margin trading facility up to RM7 million for the purchase of trading in securities listed on the stock exchanges in Malaysia. The defendant's account had exceeded the call margin and she did not regularise her account despite various reminders from the plaintiff. Subsequently, the plaintiff demanded from the defendant the sum
H outstanding. By reason of the defendant's failure to effect any payment, the plaintiff initiated proceedings in the High Court of Singapore. Upon the defendant's failure to enter appearance to the actions filed by the plaintiff in the High Court of Singapore, the plaintiff obtained a judgment in default ('JID') against the defendant for certain amount of sums. However, the
I defendant failed to make any payment to the plaintiff. On 12 July 2004, the plaintiff instituted a fresh suit ('the present suit') against the defendant in the High Court of Malaya for the same debt and based on the same facts and

issues. On 8 December 2004, a JID was entered against the defendant in the sum of US$1,678,076.38 being the sum due and owing. Based on the said JID, the plaintiff instituted bankruptcy proceedings against the defendant. On 14 February 2011, the defendant came to know about the orders made against her and immediately took steps to set aside the orders. On 20 May 2011, the said orders were annulled by the High Court. Thereafter, by way of summons-in-chambers, the defendant prayed for an order that the plaintiff's claim be struck out on the grounds that it disclosed no reasonable cause of action and was an abuse of the process of the court. The High Court dismissed the defendant's application. Hence, this appeal. The issues that arose were (i) whether the cause of action against the defendant for the loan facilities were merged in the judgment of the High Court of Singapore; (ii) whether the doctrine of *res judicata* applied in this instant appeal; and (iii) whether there was a bar imposed by s. 7 of the Reciprocal Enforcement of Judgments Act 1958 ('REJA 1958'). The plaintiff also raised a preliminary objection and argued that the High Court had heard the suit on its merits and had allowed the plaintiff's claim, therefore, there were no longer live issues between the parties and the issues had become academic.

Held (allowing appeal with costs)
Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

(1) In allowing the plaintiff's claim, the High Court had said that the plaintiff could pursue the claim at common law despite a bar imposed by s. 7 of the REJA. Therefore, the court would need to decide whether the plaintiff could pursue the claim in Malaysia based on the same facts and issues decided by the High Court of Singapore. The appeal would not be a mere exercise in futility nor had it become academic. Thus, the preliminary objection was overruled. (paras 12-14)

(2) It is well-established that at common law, the doctrine of merger does not apply to foreign judgments. Thus, the defendant's submission on this point was bereft of merit. It is also a well established law that a default judgment is as binding as a judgment given after a trial on the merits, and can and will lead to an issue of estoppel against the party against whom default judgment has been given. Accordingly, as a general rule, the fact that a judgment is rendered by default does not prevent it from operating as a basis for the application of the doctrine of *res judicata*. The plaintiff was thus barred from relitigating the action. (paras 18, 26, 28 & 29)

(3) From the statement of claims filed in both the High Court of Singapore and the High Court of Malaya, it was found that (i) the parties in the present suit were the same with the parties to the earlier suit; (ii) the claim presented in the present suit in the High Court of Malaya was identical to the one determined in the earlier suit in the High Court of Singapore; and (iii) there was a final judgment entered against the

A defendant in the High Court of Singapore. In the circumstances, the High Court of Singapore's judgment acted as a final prohibition to any other proceedings upon the same cause of action between the plaintiff and the defendant. (para 30)

B **(4)** REJA 1958 provides for the reciprocal enforcement of judgments of the reciprocating country of the original court. Since Singapore is a reciprocating country, the plaintiff should have registered the Singapore JID. Whilst it is true that the REJA 1958 does not take away the plaintiff's common law remedies, but it is in respect of non-registrable foreign judgments. In so far as a judgment of a superior court of C Singapore is concerned, being a registrable judgment, proceedings for the recovery sum payable under such judgment must be by way of registration. (paras 33 & 37)

Bahasa Malaysia *Translation Of Headnotes*

D Plaintif, sebuah bank berlesen yang menjalankan perniagaan di Singapura, menyediakan kemudahan margin saham perdagangan sehingga RM7 juta untuk pembelian perdagangan dalam sekuriti yang disenaraikan di bursa saham di Malaysia. Akaun defendan telah melebihi panggilan margin dan dia tidak mengesahkan akuannya walaupun pelbagai peringatan telah diberikan E oleh plaintif. Oleh itu, plaintif telah menuntut daripada defendan jumlah wang yang tertunggak. Oleh kerana kegagalan defendan untuk melaksanakan sebarang pembayaran, plaintif memulakan prosiding di Mahkamah Tinggi Singapura. Atas kegagalan defendan memasukkan kehadiran kepada tindakan yang telah difailkan oleh plaintif di Mahkamah Tinggi Singapura, plaintif memperolehi penghakiman ingkar ('PI') terhadap defendan untuk jumlah F wang tertentu. Walau bagaimanapun, defendan telah gagal untuk membuat apa-apa pembayaran kepada plaintif. Pada 12 Julai 2004, plaintif telah memulakan satu guaman baru ('guaman ini') terhadap defendan di Mahkamah Tinggi Malaya untuk hutang yang sama dan berdasarkan fakta-fakta dan isu-isu yang sama. Pada 8 Disember 2004, satu PI dimasukkan G terhadap defendan berjumlah US$1,678,076.38 sebagai jumlah yang perlu dibayar dan terhutang. Berdasarkan PI tersebut, plaintif memulakan prosiding kebankrapan terhadap defendan. Pada 14 Februari 2011, defendan mengetahui tentang perintah-perintah yang dibuat terhadapnya dan dengan segera mengambil langkah-langkah untuk mengetepikan perintah-perintah H itu. Pada 20 Mei 2011, perintah-perintah tersebut telah dibatalkan oleh Mahkamah Tinggi. Selepas itu, melalui saman-dalam-kamar, defendan menuntut mendapatkan perintah supaya tuntutan plaintif dibatalkan atas alasan bahawa ia tidak menunjukkan sebarang kausa tindakan yang munasabah dan adalah satu penyalahgunaan proses mahkamah. Mahkamah I Tinggi menolak permohonan defendan. Oleh itu, rayuan ini. Isu-isu yang timbul adalah (i) sama ada kausa tindakan terhadap defendan untuk kemudahan pinjaman telah digabungkan dengan penghakiman Mahkamah Tinggi Singapura; (ii) sama ada doktrin *res judicata* diguna pakai dalam kes

ini; (iii) sama ada terdapat halangan yang dikenakan oleh s. 7 Akta Penguatkuasa Salingan Hukuman 1958 ('APSH 1958'). Plaintif juga membangkitkan bantahan awalan dan menghujahkan bahawa Mahkamah Tinggi telah mendengar guaman atas merit dan telah membenarkan tuntutan plaintif, oleh itu, tiada lagi isu-isu berbangkit antara pihak-pihak yang terlibat dan isu-isu telah menjadi akademik.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:

(1) Dalam membenarkan tuntutan plaintif, Mahkamah Tinggi telah menyatakan bahawa plaintif boleh meneruskan tuntutannya di bawah common law walaupun terdapat halangan yang telah dikenakan oleh s. 7 APSH 1958. Oleh itu, mahkamah harus memutuskan sama ada plaintif boleh meneruskan tuntutannya di Malaysia berdasarkan fakta-fakta dan isu-isu yang diputuskan oleh Mahkamah Tinggi. Rayuan tidak akan menjadi usaha sia-sia dan ia juga tidak menjadi akademik. Oleh itu, bantahan awalan ditolak.

(2) Adalah menjadi pengetahuan umum di bawah common law bahawa doktrin penggabungan tidak diguna pakai kepada penghakiman asing. Oleh itu, hujahan defendan berkenaan isu ini ketandusan merit. Adalah juga undang-undang matan bahawa penghakiman ingkar adalah terikat seperti penghakiman yang diberikan selepas perbicaraan atas merit, yang boleh dan akan membawa kepada isu estopel terhadap pihak yang telah diberikan penghakiman ingkar terhadapnya. Sewajarnya, sebagai peraturan umum, fakta bahawa satu penghakiman telah disebabkan keingkaran tidak menghalangnya daripada beroperasi sebagai satu asas untuk penggunaan doktrin *res judicata*. Plaintif oleh itu terhalang daripada melitigasi semula tindakan itu.

(3) Daripada penyata tuntutan yang difailkan di kedua-dua Mahkamah Tinggi Singapura dan Mahkamah Tinggi Malaya, didapati bahawa (i) pihak-pihak dalam guaman ini adalah pihak-pihak yang sama dengan guaman terdahulu; (ii) tuntutan yang dikemukakan dalam guaman ini di Mahkamah Tinggi Malaya adalah sama dengan yang telah diputuskan dalam guaman terdahulu di Mahkamah Tinggi Singapura; dan (iii) terdapat penghakiman muktamad dimasukkan terhadap defendan di Mahkamah Tinggi Singapura. Dalam keadaan ini, penghakiman Mahkamah Tinggi Singapura bertindak sebagai larangan akhir terhadap apa-apa prosiding lain atas sebab kausa tindakan yang sama di antara plaintif dan defendan.

(4) REJA 1958 memperuntukkan penguatkuasaan penghakiman bersaling mahkamah asal negara salingan. Oleh kerana Singapura adalah negara salingan, plaintif sepatutnya mendaftarkan PI Singapura. Walaupun ia

benar bahawa REJA tidak mengambil remedi-remedi common law plaintif, tetapi ia adalah berkenaan pertimbangan penghakiman asing bukan boleh daftar. Setakat sesuatu penghakiman mahkamah atasan Singapura yang berkenaan, sebagai penghakiman boleh daftar, prosiding bagi mendapatkan jumlah yang harus dibayar di bawah penghakiman sebegitu hendaklah dengan cara pendaftaran.

Case(s) referred to:
Barber v. Lamb [1860] 8 CB (NS) 95 ***(refd)***
Carl Zeiss Stiftung v. Rayner & Keeler Ltd (No 2) [1967] 1 AC 853 ***(refd)***
Charm Maritime Inc v. Kyriakou [1987] Llyod's Rep 433 ***(refd)***
Engineering v. Moses [1984-86] 2 GLR 319 ***(refd)***
In re A Judgment Debtor [1939] 1 Ch 601 ***(refd)***
Indian Corridor Sdn Bhd & Anor v. Golden Plus Holdings Bhd [2008] 5 CLJ 774 CA ***(refd)***
Kok Hoong v. Leong Cheong Kweng Mines Ltd [1964] AC 993 ***(refd)***
Mvaami (Pvt) Ltd v. Standard Finance Ltd 1977 (1) SA 861 (R) ***(refd)***
New Brunswick Railway Co v. British & French Trust Corporation Ltd 1938 4 All ER 747 ***(refd)***
Sun Life Assurance Company of Canada v. Jervis [1944] AC 111 ***(refd)***
Taylor v. Hollard [1902] 1 KB 676 ***(refd)***

Legislation referred to:
Reciprocal Enforcement of Judgments Act 1958, s. 7

Foreign Judgments (Reciprocal Enforcement) Act 1933 [UK], s. 6

For the appellant - Watson Peter; M/s Watson Peter & Mohd Fuad
For the respondent - Ratha Govindasamy (Norshaliza Mohd Khalid with her); M/s Skrine

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Zawawi Salleh JCA:

Antecedents

[1] In this judgment, the parties are referred to as they were in High Court.

[2] The genesis of dispute may be traced back to the event which occurred on 7 June 1996, when the plaintiff, a licensed bank carrying business in Singapore, made available to the defendant a share margin trading facility up to RM7 million for the purpose of trading in securities listed on the stock exchanges in Malaysia.

[3] The defendant's account had exceeded the call margin and she did not regularise her account despite various reminders from the plaintiff.

[4] *Vide* letter dated 4 February 1998, the plaintiff demanded from the defendant the outstanding sum as at 27 January 1998 of RM4,429,887.83, all contractual interest and other applicable dues. By reason of the defendant's failure to effect any payment, the plaintiff instituted proceedings in the High Court of Singapore.

[5] On 18 November 1998, upon the failure of the defendant to enter an appearance to the actions filed by the plaintiff in the High Court of Singapore, the plaintiff obtained a judgment in default (JID) against the defendant for the following sums:

(a) the sum of US$876,392.26 being the amount outstanding as at 11 March 1998; and

(b) contractual interest on the sum of US$876,392.26 as follows:

(i) the sum of US$109,431.62 from 11 March 1998 to 2 September 1998;

(ii) the sum of US$19,331.97 from 3 September 1998 to 10 November 1998; and

(iii) interests at the contractual rate on the sum of US$876,392.26 from 11 November 1998 to the date of full payment.

[6] The defendant had failed to make any payment to the plaintiff. On 12 July 2004, the plaintiff instituted a fresh suit (the present suit) against the defendant in the High Court of Malaya at Kuala Lumpur for the same debt and based on the same facts and issues.

[7] On 8 December 2004, the plaintiff entered of judgment in default (JID) against the defendant in the sum of US$1,678,076.38 (its equivalent of RM6,376,690.24) being the sum due and owing as at 31 July 2003.

[8] Based on the said JID, the plaintiff instituted bankruptcy proceedings against the defendant. On 14 December 2010, a receiving order and adjudication order had been entered against the defendant.

[9] On 14 February 2011, the defendant came to know about the orders made against her. She immediately took steps to set aside the orders. On 20 May 2011, the said orders were annulled by the High Court.

[10] Thereafter, by way of summons-in-chambers dated 15 December 2011, the defendant prayed for an order that the plaintiff's claim be struck out on the grounds that it disclosed no reasonable cause of action and/or otherwise it was an abuse of process of court.

[11] The learned High Court Judge dismissed the defendant's application. Hence this appeal.

A **Preliminary Objection**

[12] When the appeal came before us for hearing, learned counsel for the plaintiff raised a preliminary objection to the appeal. Learned counsel contended that the High Court had heard the suit on its merits and allowed the plaintiff's claim. Therefore, it was argued that there were no longer live
B issues between the parties and the issues have become academic.

[13] It is pertinent to note that before the present appeal, the defendant had lodged an appeal against the decision of the High Court allowing the plaintiff's claim. The defendant's appeal to the Court of Appeal was registered as W-02-1466-06/2012. On 21 November 2013, the Court of
C Appeal dismissed the defendant's application for extension of time to file record of appeal and consequently, the appeal was struck out.

[14] We overruled the preliminary objection. In allowing the plaintiff's claim, the High Court had said that the plaintiff could pursue the claim at
D common law despite a bar imposed by s. 7 of the Reciprocal Enforcement of Judgments Act 1958. Therefore, we need to decide whether the plaintiff could pursue the claim in Malaysia based on the same facts and issues decided by the High Court of Singapore. Therefore, the appeal would not be a mere exercise in futility nor had it become academic. (See *Sun Life*
E *Assurance Company of Canada v. Jervis* [1944] AC 111, *Indian Corridor Sdn Bhd & Anor v. Golden Plus Holdings Bhd* [2008] 3 MLJ 653).

The Appeal

[15] We now turn to the merits of the appeal. The defendant's arguments anchored on the following grounds:

F

(a) the doctrine of merger;

(b) estoppel; and

(c) whether there was a bar imposed by s. 7 of the Reciprocal Enforcement of Judgments Act 1958 ("REJA 1958").

G

Ground (a) And (b): Merger And Estoppel

[16] We will deal with the grounds (a) and (b) together because they are related. The defendant argued that the cause of action against her for the loan facilities was merged in the judgment of the High Court of Singapore. In
H support of her argument, the defendant relied on *Halsbury's Law of England* (vol. 26, 4th edn) at para 550 which states:

> A plaintiff who has once sued a defendant to judgment may not while the judgment stands even though unsatisfied, sue him again for the same cause, not because he is estopped from doing so … but because the cause
I of action is merged into the judgment which creates an obligation of a higher nature.

[17] Learned editors of *Halsbury's* continued by stating at para 551 as follows:

> When a judgment has been given in an action, the cause of action in respect of which it was given is merged into the judgment and its place is taken by the rights created by the judgment so that a second action may not be brought on that cause of action.

[18] With respect, the submission is bereft of merit. It is well established that at common law the doctrine of merger does not apply to foreign judgments (See *Barber v. Lamb* [1860] 8 CB (NS) 95, *Taylor v. Hollard* [1902] 1 KB 676). We refer to *Spencer Bower and Turner on The Doctrine of Res Judicata* (1969) which states at para 433:

> An English cause of action, or prosecution is deemed to be merged in and effaced by an English civil or criminal judgment pronounced thereon and a civil judgment includes the decision of an arbitral tribunal whether domestic or statutory but no foreign judgment has this or any effect upon the original cause of action. …

[19] The authors further stated at paras. 436 and 437:

> A foreign judgment is not deemed of a higher nature than the original cause of action as is an English judgment: therefore no such judgment operates as a merger or as a bar to subsequent proceedings in an English court for the same relief, and on the same cause of action, as that which formed the subject of the foreign judgment.
>
> 'Foreign' is here used in its strict technical sense of 'non-English'. Accordingly a recovery in the courts of any British colony or any part of Her Majesty's Dominions other than England, is no more a bar to a second recovery in an English court than is a foreign judgment in the popular sense of the word.

[20] The defendant submitted that the Singapore JID should be regarded as an effective bar to subsequent proceedings in Malaysia as the foreign judgment given in High Court of Singapore was conclusive as to any matter adjudicated. Therefore, the doctrine of *res judicata* applied in this instant appeal.

Our Findings

[21] We begin by stating what the doctrine of *res judicata* is, and then to consider what the limits of the *res judicata* on a foreign judgment are. According to K R Handley J (as he then was) in *Spencer Bower and Handley: Res Judicata* (LexisNexis, 4th edn, 2009) at para 1.01:

> [A] *res judicata* is a decision pronounced by a judicial or other tribunal with jurisdiction over the cause of action and the parties, which dispose once and for all of the fundamental matter decided, so that, except on appeal, they cannot be relitigated between persons bound by the judgment.

[22] For the doctrine of estoppel to apply, six requirements must be satisfied:

(i) the question to be decided in the second proceeding is the same question that has been decided in the first proceedings;

(ii) the question decided in the first proceeding is fundamental to the decision in the first proceeding, not collateral to the decision;

(iii) the question decided in the first proceeding includes all subject matter encompassing the question whether decided expressly or by necessary logical consequence;

(iv) the decision in the first proceeding is a final decision on the question;

(v) the decision in the first proceeding is a judicial decisions; and

(vi) the decision making forum in the first proceeding had the jurisdiction to decide the question.

(See Donal J. Lange, *The Doctrine of Res Judicata in Canada*, 2nd edn. (Markham: LexisNexis Canada Inc. 2004).

[23] The doctrine of *res judicata* reflects the court's attempts to achieve finality in litigation, in upholding the public interest by ensuring that there is an end to litigation as well as the private interest by protecting parties from being harassed by repeated suits and prosecution for the same cause. (See *Charm Maritime Inc v. Kyriakou* [1987] Llyod's Rep 433).

[24] In the case of *Carl Zeiss Stiftung v. Rayner & Keeler Ltd (No. 2)* [1967] 1 AC 853; [1966] 2 All ER 536; [1967] RPC 497; [1966] 3 WLR 125, the House of Lords was asked to decide whether the fact that an issue had already been determined in proceedings in West Germany could give rise to issue estoppel. The House of Lords unanimously held that it could when the requirements of issue estoppel had been fulfilled. Lord Guest held that the conditions were: (a) that the judicial decision which is said to create the estoppel was final, and (b) that the parties to the judicial decision or their privies, were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[25] In this instant appeal, the judgment relied upon by the defendant before us was a default judgment. Therefore, we need to examine the scope of the rule of estoppel in respect of judgment in default. The scope of the rule of estoppel in this regard was fully expounded by Apaloo CJ in the Court of Conca in the case of *Engineering v. Moses* [1984-86] 2 GLR 319 at p. 324:

> Ordinarily, this plea is available only after the issue has been determined in a contested action in which both parties have been heard. But it has been held to apply even in cases where the decision was reached in default of either party. In the older cases, it was consistently held that estoppel applied to default judgments where the default was in

appearance or pleading, once a valid decision was reached. Thus in the old case of *Aslin v. Parkin* [1758] 97 ER 501 at 502, Lord Mansfield is reported to have said:

> That there is no distinction between a judgment in ejectment upon a verdict, and a judgment by default. In the first place, the right of plaintiff is tried and determined against the defendant; in the last, it is conferred.

[26] It is well established law that a default judgment is as binding as a judgment given after a trial on the merits, and can and will lead to an issue of estoppel against the party against whom default judgment has been given. It was held in *Kok Hoong v. Leong Cheong Kweng Mines Ltd* [1964] AC 993:

> [T]here is no doubt … a default judgment is capable of giving rise to an estoppel per *res judicata*. The question is not whether there can be such an estoppel, but rather what the judgment prayed in aid should be treated as concluding and for what conclusion it is to stand.

[27] In *Mvaami (Pvt) Ltd v. Standard Finance Ltd* 1977 (1) S.A. 861 (R), the English case of *New Brunswick Railway Co v. British & French Trust Corporation Ltd 1938* 4 All ER 765 was approved and applied, where it was held that:

> Default judgments, though capable of giving rise to estoppels, must always be scrutinised with extreme particularity for the purpose of ascertaining the bare essence of what they must necessarily have decided and - they can estop only for what must necessarily and with complete precision have been thereby determined.

[28] Accordingly, as a general rule, the fact that a judgment is rendered by default does not prevent it from operating as a basis for the application of the doctrine of *res judicata*.

[29] Applying the above cited authorities, we agreed with the submission of learned counsel for the defendant that the plaintiff was barred from relitigating the action. We have perused the statement of claims filed in both the High Court of Singapore and the High Court of Malaya and found:

(a) that the parties in the present suit were the same with the parties to the earlier suit;

(b) that the claim presented in the present suit in the High Court of Malaya was identical to the one determined in the earlier suit in the High Court of Singapore; and

(c) That there was a final judgment entered against the defendant in the High Court of Singapore.

[30] In the circumstances, the High Court of Singapore's judgment acts as a final prohibition to any other proceedings upon the same cause of action between the plaintiff and the defendant.

[31] In the result, we found in favour of the defendant in respect of the grounds (a) and (b).

Ground (c): Reciprocity

[32] It was learned counsel for the defendant's contention that the writ of summons must be struck out because it was in violation of the express provision of s. 7 of the REJA 1958. Section 7 of the REJA 1958 is in the following terms:

> No proceedings for the recovery of a sum payable under a judgment of a superior court, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in Malaysia.

[33] Learned counsel for the defendant submitted that the REJA 1958 provides for the reciprocal enforcement of judgments of the reciprocating country of the original court. Since Singapore is a reciprocating country, the plaintiff should have registered the Singapore JID. Accordingly, it was argued, the writ was clearly unsustainable and was an abuse of process and must be struck out.

[34] In reply, learned counsel for the plaintiff contended that REJA 1958 merely provides the plaintiff with a swifter means to enforce the Singapore JID but in no way abolished or extinguished the plaintiff's cause of action against the defendant at common law to recover monies due and owing from the defendant to the plaintiff. The plaintiff referred us to civil practice in Singapore and Malaysia (LexisNexis Butterworths, 2011) where learned authors stated at p. 79:

> Accordingly, a foreign judgment is not automatically enforceable in Singapore or Malaysian courts. Where the court does have jurisdiction over the judgment debtor, separate proceedings may be brought on the foreign judgment.

[35] Our attention was directed to the case of *In re A Judgment Debtor* [1939] 1 Ch 601 where the English Court of Appeal held at p. 604:

> Of course, apart from statute, the only way of enforcing the judgment of a foreign Court (and in the word 'foreign' include Scotch and Irish and Dominion Courts) was by way of action, and various defences could be set up to an action of that kind …

[36] The English Court of Appeal further held at p. 608:

> I should have said, of course, that s. 6 only applies to judgments for recovery of a sum of money. It seems to me that s. 6 shows that the Parliament was intending by this Act to provide that the only method of enforcing foreign judgments should be by registration. That being so, the holder of a registered judgment can do whatever s. 2 tells him that he can do. When I look at s. 2 and find clear language used which, according to its ordinary meaning, would cover a bankruptcy notice. I must decline to read into that language by implication limiting words which would cut

> down the effect, and cut down its effect with a result which, I venture to think, cannot possibly have been intended by the Legislature – namely, of depriving the holder of a foreign judgment of valuable rights with regard to its enforcement which he had previously possessed.

[37] With respect, we were unable to agree with learned counsel for the plaintiff's submission. Whilst it is true that the REJA 1958 does not take away the plaintiff's common law remedies, but it is in respect of non-registrable foreign judgments. In so far as a judgment of a superior court of Singapore is concerned, being a registrable judgment, proceedings for the recovery sum payable under such judgment must be by way of registration.

[38] Further, the submission by learned counsel for the plaintiff in respect of the case of *In re A Judgment Debtor (supra)* was patently erroneous. In that case, the creditor obtained judgment in France in 1937, which had been registered in 1938 pursuant to the Foreign Judgments (Reciprocal Enforcement) Act 1933. The creditor then issued bankruptcy notice against the debtor. The Deputy Registrar, upon application by the debtor, set aside the bankruptcy notice. It was the debtor's contention that the registration does not give the right to start bankruptcy proceedings by way of bankruptcy notice or otherwise. The creditor would have to sue upon the foreign judgment and obtain a judgment thereon. Sir William Greene MR had discussed the similarity and differences between the Judgments (Extension) Act 1868 and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (on which our REJA 1958 was based). The Master of Rolls noted that the earlier Act allowed litigants to enforce foreign judgment by suit in the country. The first paragraph of the judgment referred by the plaintiff was made in the context of the 1868 Act in which the Master of Rolls stated:

> The Act of 1868 did not take away from the holder of a foreign judgment his right to start proceedings in the Courts of this country to enforce the judgment, proceedings initiated by writ in the usual way.

[39] In our view, learned counsel for the plaintiff's reliance on the case *In re Judgment Debtor (supra)* was clearly misplaced. The paragraph cited by the plaintiff does not stand for the proposition advanced by the plaintiff. The above paragraph was in relation to the interpretation of sub-s. 2(2) of the 1933 Act. Subsection 2(2) which provides for the effect of registration states:

> Subject to the provisions of this Act with respect to the setting aside of registration: (a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and (b) proceedings may be taken on a registered judgment; and (c) the sum for which a judgment is registered shall carry interest; and (d) the registering court shall have the same control over the execution of a registered judgment; as if the judgment had been a judgment originally given in the registering court and entered on the date of registration.

[40] The Deputy Registrar in that case had construed the word "proceedings" in para (b) of the sub-s. 2(2) to mean proceedings limited by way of execution strictly by judicial writ which are dealt with in para (a). The English Court of Appeal held that the Deputy Registrar erred in interpreting subsection 2(2) to have the effect of limiting the rights of the creditor. The interpretation contravened the intention of the Parliament.

[41] In fact, the English Court of Appeal, after comparing both Acts of 1868 and 1933, held at p. 608:

> … under the present Act s.6 prohibits any such method of dealing with a foreign judgment if it is a judgment registrable under the Act; in other words, where the judgment is registered under the Act, the only thing that the holder of such a judgment is entitled to do is to register it, and after registering it, of course, he obtains the rights which the Act expressly say shall follow upon registration.

[42] The English Court of Appeal further stated that if the Registrar was right in his decision, it would produce a startling result because the holder of a foreign judgment registrable under the Act is precluded to enforce that judgment in bankruptcy and he could not sue on the foreign judgment because s. 6 prevented him from doing so. The result would be that the 1933 Act would have placed the holders of a foreign judgment in a much worse position than they were before.

[43] It was clear, therefore, that the second part of the judgment referred by the plaintiff's counsel was made in that context.

Conclusion

[44] For the foregoing reasons, we were of the opinion that the order of the High Court must be set aside. The appeal was allowed with costs of RM10,000. Deposit was refunded.